14 **AMENDED COMPLAINT. Filed June 30, 1971.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RICHARD A. MISURELLI and
TERRANCE MC CUE,
Plaintiffs,

vs. Case No. 71-C-316

CITY OF RACINE,
a Wisconsin Municipal Corporation,
Defendant.

PARTIES

1. That your plaintiff, Terrance McCue is an adult citizen of the United States of America.

2. That your plaintiff, Richard A. Misurelli is an adult resident of the United States of America.

3. That the plaintiffs above captioned are adult citizens of the City of Racine, County of Racine, State of Wisconsin.

4. That the defendant above captioned is a municipal corporation organized, licensed, and existing under the constitution and statutes of the State of Wisconsin.

5. That all parties are residents and are physically located in the Eastern Judicial District of the United States District Court for Wisconsin.

JURISDICTION

6. That the plaintiffs' causes of action arise under Title 42 of the United States Code, Sections 1983, and 1985, and this Court has jurisdiction of their action under Title 28 in the United States Code, Sections 1331, 1332, and 1343.

PLAINTIFFS' FIRST CAUSE OF ACTION

7. That at all times pertinent thereto, plaintiffs were the owners and operators of the Pussy Cat Lounge, and the owners of a Class "B" Retail Femented Malt Beverage and Intoxicating Liquor License.

8. That the business of the Pussy Cat Lounge is that commonly referred to as a tavern and survives primarily by virtue of the dispensation of fermented malt beverages and intoxicating liquors.

9. That during the license year 1970-1971, said Class "B" license was held in the name of the plaintiff, McCue, subject to the partnership interest of the plaintiff, Richard Misurelli.

10. That during said license year, application was duly, properly, and timely made for a Class "B" retail fermented malt beverage and intoxicating liquor license for the license year 1971-1972 by the plaintiff, Misurelli, for the purposes of the continuation of the partnership business, and the defendant was so informed in all such respects.

11. That on 1 June, 1971, the Common Council of the City of Racine acted to deny the said application for said license to your plaintiffs, no further action by other branches of defendant government having been taken, and this such action having been regarded as vital by the defendant.

12. That at all times pertinent hereto, the defendant has acted under color of state law, basing its actions on its ordinances and the prescriptions and permission granted to-wit to do so by Section 66.054 and Chapter 176 of the Statutes of the State of Wisconsin.

13. That defendant city denied the said license in question, without —

a. Affording plaintiffs a hearing;
b. Taking of sworn testimony;
c. Notice of some council committee meetings at which discussions on the subject of plaintiffs' application were had;
d. The right of confrontation;
e. The right of cross-examination;
f. The making of a record for review;
g. The opportunity to present sworn testimony;
h. Notice of objections or complaints which would be considered by the defendant city in its decision making process with reference to the said license application by plaintiffs.

16 14. That the defendant city acted without any perceptible standards in denying the license.

PLAINTIFFS' SECOND CAUSE OF ACTION

15. That the plaintiffs in their business feature dancing as a mode of expression. That such dancing features various types of costuming, depending upon the expression each performer wishes to convey. That such dancing also features nudity or the absence of costuming for the same purpose.

16. That the plaintiffs are informed and verily believe that the defendant city denied the license for the plaintiffs because plaintiffs permitted this conduct, which is protected by the First Amendment.

17. That the defendant city by such denial of the license was illegally using its licensing power for the purpose of censoring conduct which it deemed undesirable and objectionable. That the city made such determination without any prior judicial adversary proceeding finding such conduct obscene.

18. That by reason of such acts of censorship by the City of Racine, the plaintiffs have been deprived, under color of law and under customs and usages of the State of Wisconsin, of their right of freedom of speech and expression as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

19. That the defendant has denied plaintiffs due process of law to the irreparable detriment of the plaintiffs.

20. That such denial effectively denied plaintiffs the ability to continue in the tavern business as of 1 July, 1971, because the present license held by plaintiffs expires 30 June, 1971.

21. That the plaintiffs have an investment in their business in excess of $20,000.00 and face emminent irreparable damage and injury.

22. That plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray that the Court grant judgment as follows:

a. A permanent mandatory injunction ordering the defendant to issue a Class "B" Fermented Malt Beverage and Intoxicating Liquor license to the plaintiffs upon payment by the plaintiffs of all appropriate fees.

b. A temporary mandatory restraining order and/or preliminary mandatory injunction ordering the defendant to issue a Class "B" Fermented Malt Beverage and Intoxicating Liquor license to the plaintiffs upon payment of appropriate fees by plaintiffs to the defendant during the pendency of this action.

c. An immediate, emergency hearing to determine why the defendant should not be ordered to issue a Class "B" Fermented Malt Beverage and Intoxicating Liquor license as prayed for in Paragraph (b) herein.

d. Allowance to plaintiffs of their costs herein, including reasonable attorneys' fees, disbursements, and such other relief as to the Court seems meet.

Respectfully submitted,

By: */s/ Victor C. Cairo,*
Victor C. Cairo,
Attorney for Plaintiffs

/s/ Jay Schwartz
Jay Schwartz,
Of Counsel

18 STATE OF WISCONSIN)
) SS
RACINE COUNTY)

Terrance McCue, being first duly sworn, on oath deposes and says that he is one of the plaintiffs in the above action, that he has read the foregoing Amended Complaint and knows its contents and that the same is true to his own knowledge, except as to those matters alleged on information and belief, and as to those matters he believes it to be true.

/s/ Terrance McCue

Subscribed and sworn to before me
this *28* day of June, 1971.

/s/ Victor C. Cairo
Notary Public, Racine County, Wisconsin
Permanent Commission

48 **TEMPORARY RESTRAINING ORDER TO CITY OF RACINE TO ISSUE LIQUOR LICENSE TO PLAINTIFFS. Filed July 2, 1971. (Title omitted in printing.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

The motion for a temporary mandatory restraining order having regularly come before the Federal District Court for the Eastern District of Wisconsin at 4:00 o'clock in the afternoon of June 30, 1971:

On reading the affidavits, briefs and the verified complaint of the plaintiffs in support of the motion and the affidavits of the defendant in opposition thereto, and after hearing

Victor C. Cairo, Esq., attorney for the plaintiffs, and Mr. Edward Krenzke, Deputy City Attorney, attorney for the defendant in opposition to the motion:

IT IS ORDERED that City of Racine shall issue forthwith upon the tender of appropriate fees, a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor License to Richard Misurelli and Terrance Mc Cue, to take all necessary steps to effectuate the same, until further order of the Court.

Dated at Milwaukee, Wisconsin, this *2d* day of July, A.D., 1971. *Nunc pro tunc June 30, 1971.*

BY THE COURT:

/s/ John W. Reynolds
United States District Judge

94 **ANSWER OF DEFENDANT, CITY OF RACINE. Filed July 23, 1971. (Title omitted in printing.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Now comes defendant, City of Racine, by its attorneys, Jack Harvey and Edward A. Krenzke, City Attorneys, and in answer to plaintiffs' Complaint in the above entitled matter, admits, denies and alleges as follows:

FIRST: In answer to paragraphs 1, 2, 3, 4, 5, 7, 8, 11, 12 and 16 admits the allegations therein contained.

SECOND: In answer to paragraph 6 of plaintiffs' complaint, the defendant denies that this Court has jurisdiction of plaintiffs action.

THIRD: In answer to paragraph 9 of plaintiffs' complaint, defendant denies that during the license year 1970-71 that a Class "B" Liquor License was held by plaintiff Mc Cue, subject to the partnership interests of the plaintiff Misurelli. And in further answer to said paragraph 9, defendant alleges that the Class "B" Liquor License for 1970-71 was issued to Terrance Mc Cue individually, and that Terrance Mc Cue's application for such license was filed with the City
95 Clerk of the City of Racine and did not disclose the existence of any partnership between plaintiff Mc Cue and Misurelli, nor that the said applicant was acting as agent or employee for any other person, and that under Wisconsin law any such partnership arrangement is void as it relates to any interests in said liquor license. In further answer to said paragraph 9, defendant alleges that plaintiff Misurelli made application for a liquor license for the year 1971-72, and in such application did not disclose the existence of any partnership, nor that he was acting as agent or employee for any other person, and that under Wisconsin law any such partnership arrangement is void as it relates to any interest in said liquor license.

FOURTH: In answer to paragraph 10 of plaintiffs' Complaint, defendant admits that application was made by plaintiff Misurelli for a Class "B" Liquor License for the license year 1971-72, but denies that said application was made for the purpose of the continuation of any partnership. In further answer to said paragraph 10, defendant alleges that plaintiff Misurelli made application in his name only and did not disclose the existence of any partnership, and denies that defendant was informed of the existence of any partnership.

FIFTH: In answer to paragraph 13 of plaintiffs' Complaint, defendant denies the allegations therein contained and alleges that plaintiff Misurelli's application was a new application for a liquor license for the year 1971-72, and that said application was considered in accordance with the provisions of Section 176.05, as such statute was construed by the Wisconsin Supreme Court, particularly in the case of Ruffalo
96 vs. Kenosha, 38 Wis. (2d) 518, and that plaintiff Misurelli was afforded to public hearings, to-wit, May 11 and 25, 1971, and his attorney was given a third opportunity to be heard at a special committee meeting on June 1; and that said plaintiff Misurelli was present when objections were made concerning the granting of a license to him and was given opportunity to present testimony and witnesses in his own behalf, and that said hearings afforded plaintiff Misurelli were legislative type hearings and that a record was kept for review and that at all times was aware of the nature of the objections being made to the granting of his license; and in further answer to said paragraph 13, defendant alleges that pursuant to Section 176.05 as construed by the Wisconsin Supreme Court, he was afforded due process and that by virtue of his application for a license, he was on notice that a public hearing was to be had upon said application and that notice of such meetings were posted on the official bulletin board of City Hall, and were given newspaper and radio publicity.

SIXTH: In answer to paragraph 14 of plaintiffs' Complaint, defendant denies that it acted without any perceptable standards in denying said license, but acted in accordance with the provisions of Section 176.05 as that statute has been interpreted by the Wisconsin Supreme Court.

SEVENTH: In answer to paragraph 15 of plaintiffs' Complaint, defendant denies the allegations therein contained and alleges that plaintiffs were afforded due process of law pursuant to provisions of Section 176.05, Wis. Stats., as that statute has been interpreted by the Wisconsin Supreme Court.

97 EIGHTH: In answer to paragraph 17 of plaintiffs' Complaint, defendant alleges it has insufficient information so as to form a belief of the allegations therein contained, and therefore denies the same and puts plaintiffs to their proof. And in further answer to said paragraph, defendant alleges that plaintiffs interest in a liquor license is a privilege as distinguished from a property right and has no monitory value that can be considered as an investment.

NINTH: In answer to paragraph 18 of plaintiffs' Complaint, defendant denies the allegation therein contained and alleges that plaintiffs have an adequate remedy in the State Courts.

WHEREFORE, defendant prays for:

A. Complaint be dismissed

B. That defendant be awarded costs herein, including reasonable attorney's fees, disbursements, and such other relief as the Court seems just.

Dated this *21st* day of July, 1971.

Respectfully submitted,

/s/ Jack Harvey
Jack Harvey, City Attorney

/s/ Edward A. Krenzke
Edward A. Krenzke, Deputy City Att'y

Attorneys for Defendant
City Hall
730 Washington Avenue
Racine, Wisconsin

98 STATE OF WISCONSIN)
) SS.
COUNTY OF RACINE)

ALBERT A. REID, being first duly sworn, on oath deposes and says that he is the City Clerk of the City of Racine, the defendant in the above entitled action, and that as such he is authorized to make this oath on and behalf of the above named defendant; that he makes this vertification on behalf of the City of Racine; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and to those matters he believes it to be true.

/s/ Albert A. Reid
Albert A. Reid

Subscribed and sworn to before me
this 21st day of July, 1971.

/s/ Edward A. Krenzke
Notary Public, Racine County, Wisconsin
My Commission is permanent.

105 **DECISION AND ORDER DENYING DEFENDANTS' MOTION TO VACATE THE TEMPORARY RESTRAINING ORDER AND FURTHER DENYING DEFENDANT'S MOTION TO MODIFY TEMPORARY RESTRAINING ORDER. Filed July 30, 1971.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TERRANCE McCUE and
RICHARD MISURELLI, et al.
Plaintiffs,

v.

CITY OF RACINE,
a Wisconsin Municipal Corporation, et al.
Defendants.

In each of the above-captioned cases the plaintiffs are tavernkeepers who during the year June 1970-June 1971 held Class "B" Liquor Licenses and provided nude and semi-nude dancing entertainment in their taverns. They are suing the defendants because defendants refused to renew their liquor licenses for the year June 1971-June 1972. Plaintiffs allege that in proceeding under Chpater 176 of the Wisconsin Statutes, the defendants violated plaintiffs' First and Fourteenth Amendment rights and created a cause of action under Title 42 U.S.C. § 1983. Jurisdiction is alleged under Title 28 U.S.C. §§ 1331 and 1343.

In each case I have entered a temporary restraining order ordering the defendants to temporarily issue liquor licenses to the plaintiffs and maintain those licenses until further order of this court. The defendants have moved to vacate those temporary restraining orders or, alternatively, to modify them.

Based upon the pleadings, stipulated facts, briefs, and representations of counsel, and after a hearing held in this matter on July 26, 1971, and for reasons which will be elaborated on in a written opinion which will be filed, I have
106 concluded that I should request the convening of a three-judge court to consider the constitutionality of the pertinent provisions of Chapter 176 of the Wisconsin Statutes. Pending the convening of the three-judge court,

IT IS ORDERED that defendants' motion in each case to vacate the temporary restraining order be and it hereby is denied.

IT IS FURTHER ORDERED that defendants' motion in each case to modify the temporary restraining order be and it hereby is denied without prejudice.

Dated at Milwaukee, Wisconsin, this *29th* day of July, 1971.

/s/ John W. Reynolds
U.S. District Judge

108 **AMENDED COMPLAINT CHALLENGING CONSTITUTIONALITY OF WISCONSIN STATUTES. Filed September 21, 1971.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RICHARD A. MISURELLI and
TERRANCE MC CUE,
Plaintiffs,

v. 71-C-316

CITY OF RACINE,
a Wisconsin Municipal Corporation,
Defendant.

PARTIES

1. That the plaintiffs, Terrance Mc Cue and Richard A. Misurelli, are adult citizens of the United States of America and adult residents and citizens of the city of Racine, Racine County, State of Wisconsin.

2. That the defendant above captioned is a municipal corporation organized, licensed and existing under the constitution and statutes of the State of Wisconsin.

3. That all parties are residents and are physically located in the Eastern Judicial District of the United States District Court for Wisconsin.

JURISDICTION

4. That the plaintiffs' causes of action arise under Title 42 of the United States Code, Sections 1983, and 1985, and this Court has jurisdiction of their action under Title 28 of the United States Code, Sections 1331, 1332, and 1343.

PLAINTIFFS' FIRST CAUSE OF ACTION

5. That at all times pertinent thereto, plaintiffs were
109 the owners and operators of the Pussy Cat Lounge, and the owners of a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor License.

6. That the business of the Pussy Cat Lounge is that commonly referred to as a tavern and survives primarily by virtue of the dispensation of fermented malt beverages and intoxicating liquors.

7. That during the license year 1970-1971, said Class "B" license was held in the name of the plaintiff, McCue, subject to the partnership interest of the plaintiff, Richard Misurelli.

8. That during said license year, application was duly, properly, and timely made for a Class "B" retail fermented malt beverage and intoxicating liquor license for the license year 1971-1972 by the plaintiff, Misurelli, for the purposes of the continuation of the partnership business, and the defendant was so informed in all such respects.

9. That on 1 June, 1971, the Common Council of the City of Racine acted to deny the said application for said license to your plaintiffs, no further action by other branches of defendant government having been taken, and this such action having been regarded as vital by the defendant.

10. That at all times pertinent hereto, the defendant has acted under color of state law, basing its actions on its ordinances and the prescriptions and permission granted to-wit to do so by Section 66.054 and Chapter 176 of the Statutes of the State of Wisconsin.

11. That defendant City denied the said license in question, without —

a. Affording plaintiffs a hearing;
b. Taking of sworn testimony;
c. Notice of some council committee meetings at which discussions on the subject of plaintiffs' application were had;
d. The right of confrontation;
e. The right of cross-examination;
f. The making of a record for review;
g. The opportunity to present sworn testimony;
h. Notice of objections or complaints which would be considered by the defendant city in its decision making process with reference to the said license application by plaintiffs.

12. That the defendant city acted without any perceptible standards in denying the license.

PLAINTIFFS' SECOND CAUSE OF ACTION

13. That the plaintiffs in their business feature dancing as a mode of expression. That such dancing features various types of costuming, depending upon the expression each performer wishes to convey. That such dancing also features nudity or the absence of costuming for the same purpose.

14. That the plaintiffs are informed and verily believe that the defendant city denied the license for the plaintiffs because plaintiffs permitted this conduct, which is protected by the First Amendment.

15. That the defendant city by such denial of the license was illegally using its licensing power for the purpose of censoring conduct which it deemed undesirable and objectionable. That the city made such determination without any prior judicial adversary proceeding finding such conduct obscene.

16. That by reason of such acts of censorship by the City of Racine, the plaintiffs have been deprived, under color of law and under customs and usages of the State of Wisconsin, of their right of freedom of speech and expression as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

111 17. That the defendant has denied plaintiffs due process of law to the irreparable detriment of the plaintiffs.

18. That such denial effectively denied plaintiffs the ability to continue in the tavern business as of 1 July, 1971, because the present license held by plaintiffs expires 30 June, 1971.

19. That the plaintiffs have an investment in their business in excess of $20,000.00 and face imminent irreparable damage and injury.

20. That the plaintiffs have no adequate remedy at law.

Page of Record

PLAINTIFFS' THIRD CAUSE OF ACTION CHALLENGING CONSTITUTIONALITY OF WISCONSIN STATUTES

21. That the defendant city, through its agents, employees, servants and officials, at all times mentioned herein, acted pursuant to and under color of Section 176.05 (1) and 176.05 (8) of Statutes of the State of Wisconsin.

22. That said acts of the defendant pursuant to said Statutes and under the color, custom and usage of the State of Wisconsin and the City of Racine as used and enforced against the plaintiff in denying them a liquor license have deprived the plaintiffs of their right to due process of law which is the accepted right of every citizen of the United States.

23. That said Statutes as so enforced and set forth above by the defendant against the plaintiff are unconstitutional for following reasons:

a. They deprive plaintiffs of their liberty and property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

b. They violate the procedural due process guarantees
112 of the 14th Amendment of the United States Constitution by permitting defendant to arbitrarily grant, deny or revoke the license of plaintiffs necessary to carry on their livelihood without according plaintiffs the right to a hearing or notice prior to said action on behalf of the defendant.

c. They violate the due process requirements of the Fourteenth Amendment to the Constitution of the United States by transferring judicial powers to ministerial and legislative officials.

d. That they are vague and overly broad and fail to contain any definite ascertainable standards or guidelines.

e. That said statutes violate the prohibition against bills of attainder guaranteed by Article I, par 9, cl 3 of the United States Constitution in permitting denial of a license by legislative instead of Judicial trial.

WHEREFORE, plaintiffs pray that the Court grant judgment as follows:

a. A permanent mandatory injunction ordering the defendant to issue a Class "B" Fermented Malt Beverage and Intoxicating Liquor license to the plaintiffs upon payment by the plaintiffs of all appropriate fees.

b. A temporary mandatory restraining order and/or
113 preliminary mandatory injuction ordering the defendant to issue a Class "B" Fermented Malt Beverage and Intoxicating Liquor license to the plaintiffs upon payment of appropriate fees by plaintiffs to the defendant during the pendency of this action.

c. An immediate, emergency hearing to determine why the defendant should not be ordered to issue a Class "B" Fermented Malt Beverage and Intoxicating Liquor license as prayed for in Paragraph (b) herein.

d. For a decision and ruling by a District Court of three Judges declaring Sections 176.05 (1) and 176.05 (8) unconstitutional and void under the United States Constitution as is required to be convened by Title 28, USC Section 2281 and Title 42 USC Section 1973c.

e. Allowance to plaintiffs of their costs herein, including reasonable attorneys' fees, disbursements, and such other relief as to the Court seems meet.

Respectfully submitted,

Victor C. Cairo
and
Jay Schwartz
Attorneys for Plaintiffs

114 STATE OF WISCONSIN)
RACINE COUNTY) SS

Richard Misurelli, being first duly sworn, on oath deposes and says that he is one of the plaintiffs in the above action, that he has read the foregoing Amended Complaint and knows its contents and that the same is true to his own knowledge, except as to those matters alleged on information and belief, and as to those matters he believes it to be true.

/s/ Richard Misurelli

Subscribed and sworn to before me
this 17th Day of September, 1971.

/s/ Victor C. Cairo
Notary Public, Racine County, Wisconsin
My Commission is permanent.

115 **STIPULATION OF FACTS FILED BY THE PARTIES ON SEPTEMBER 21, 1971. (Title omitted in printing.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

It is hereby agreed by and between the plaintiffs and defendant herein, by their respective attorneys, Victor C. Cairo on behalf of the plaintiffs and Edward A. Krenzke on behalf of the defendant, that the following shall constitute agreed and stipulated facts in the above entitled case:

1. That Plaintiffs are adult citizens of the City of Racine, State of Wisconsin, and reside in the Eastern Judicial District of the United States District Court for Wisconsin.

2. That Defendant is a Wisconsin municipal corporation, located in the Eastern Judicial District of the United States District Court for Wisconsin.

3. That the business of the Plaintiffs is that commonly referred to as a tavern, and survives primarily by virtue of the dispensation of fermented malt beverages and intoxicating liquors.

116 4. That a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor license is a legal necessity for the operation of the tavern business of the Plaintiffs.

5. That Defendant, City of Racine, issued and maintained in effect a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor license in the name of Terrance McCue for the hereinbefore described premises throughout the license year 1970-1971.

6. That Plaintiff Richard Misurelli, pursuant to the provisions of Section 176.05, Wis. Stats., filed with Defendant's Clerk an appropriate and timely application for a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor License for the license year 1971-1972, with the appropriate fees, on or before 15 April, 1971.

7. That during said license year, application was duly, properly and timely made for a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor License for the license year 1971-1972 by the plaintiff Richard Misurelli for the purpose of the continuing the business known as the Pussy Cat Lounge.

8. That the application of Richard Misurelli on its face reveals no legal disability on the part of Plaintiffs to hold the license applied for.

9. That the application set forth the Plaintiffs' Richard Misurelli's desire to continue the operation of the previously established tavern business hereinbefore described.

10. That on June 1, 1971, the Common Council of the City of Racine acted to deny the said application for said license to your plaintiff, no further action by other branches of defendant government having been taken, and this such action having been regarded as final by the defendant.

117 11. That at all times pertinent hereto, the defendant has acted under color of State Law, basing its actions on its ordinances and the prescriptions and permissions granted, to-wit, to do so by Section 66.054 and Chapter 176 of the Statutes of the State of Wisconsin.

12. That no personal notice either written or oral was given to the plaintiff Misurelli of the License Committee Meetings or hearings of May 11 and May 25, 1971, or of the Racine Common Council Meeting of June 1, 1971. That oral notice was given to Counsel for Plaintiffs of the 6:30 meeting of hearing of the Licensing Committee of June 1, 1971; that the plaintiff Misurelli was the applicant, that the application was made pursuant to Section 176.05 of the Wisconsin Statutes which was in full force and effect.

13. That regular meetings of the Common Council of the City of Racine were fixed by Ordinance of the City to be held at the Council Chambers of City Hall on the 1st and 3rd Tuesday of each month; and that public notice of such meetings are given by posting notice of such meeting on the bulletin board in the main hall of City Hall on the day of such meeting; and that regular meetings of the License and Welfare Committee were fixed by Ordinance of the City to be held at City Hall on the 2nd and 4th Tuesday of each month; and that public notice of such meetings are given by posting notice of such meeting on the bulletin board in the main hall of City Hall on the day of such meeting. That May 4 and 18 and June 1 of 1971 were regularly scheduled meetings of the Common Council, and May 11 and 25, 1971 were regularly
118 scheduled meetings of the License and Welfare Committee of the Common Council. That at the Council Meeting of May 4, 1971, the application of Richard Misurelli for a retail liquor license for the year 1971-1972, along with numerous other license applications, were referred by the Common Council to the License and Welfare Committee as the duly authorized committee of the Common Council to conduct the annual license meetings required under Section 176.05 (8), Wis. Stats.

That following the public hearing conducted by the License and Welfare Committee the Deputy City Attorney was

instructed to prepare a written report based upon testimony given at the public hearings, setting forth the objections voiced against license applications, and was further instructed to present such draft to the committee at a special meeting to be called by the Chairman prior to the regular Common Council meeting to be held June 1, 1971. That a special License and Welfare Committee meeting was called for 6:30 p.m., June 1, 1971, and prior to the Common Council meeting set for 8 p.m. the same date; that at such committee meeting all members were present to consider the draft of the report and upon motion duly adopted, it was voted to report and recommend that the license application of Richard Misurelli, along with two others, be denied and the reason therefore be as set forth in Exhibit "A" attached.

14. That dates of such meetings were posted on the bulletin board of the City Hall and announcements of such meetings were made via radio and newspapers.

15. That written complaints and objections contained in the License Committee Report and Recommendation
119 recommending denial of the license application of Richard Misurelli were never made known to Misurelli or his attorney prior to the Council meeting of June 1, 1971 although plaintiff Misurelli heard the objections made at the hearings held on May 11 and 25, 1971; that Misurelli learned of the written objections to granting of this application contained in said Report and Recommendation after it was presented to the Common Council at its meeting of June 1, 1971.

16. That the applicant Misurelli was present at the License Committee Meetings of May 11 and 25, 1971, and did speak at said meetings.

17. That no license applications, including the specific application of the plaintiff Misurelli was called up for con-

sideration by the Chairman of the Licensing Committee or any member thereof at either of the Committee hearings of May 11, 1971, or of May 25, 1971. That no vote was taken at either of these two meetings on the license application of the plaintiff Misurelli.

18. That on June 1, 1971, the defendant's Common Council voted to deny the license of the Plaintiff Misurelli to continue in the tavern business, the record of such proceedings is set forth in Exhibit "A" attached hereto.

19. That the City did not issue a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor license to your plaintiff Misurelli and threatens to continue to withhold such license unless ordered to the contrary by this Court.

20. That at all meetings all persons, including plaintiff or his attorney, were given an opportunity to speak.

120 21. That at all of the meetings no speaker was sworn in or placed under oath before speaking.

22. That none of testimony or speeches at any of the meetings was recorded by a phonographic reporter so that a transcript thereof could be made.

23. Plaintiff was not advised that he could question or cross-examine any of the speakers. Plaintiff made no request to cross-examine any of the speakers.

24. That plaintiff received personally no other notice than as set forth herein.

25. That plaintiff features, as part of a tavern operation, live entertainment in the form of female professional dancers.

26. That such dancers perform both in costumes and nude.

27. That all hearings held by the defendant were legislative in nature, and there were discussions from the audience on various items such as matters were raised concerning the operation of plaintiff establishments and their effect on the City.

28. That the license application of Richard Misurelli was denied by reason of his method and manner of the operation of the Pussy Cat Lounge during the license year 1970-1971 as set forth in the Resolution of the Licensing Committee presented to the City Common Council.

29. That no enforceable obscenity standard has been established or articulated by the defendant City as to nude dancing entertainment on licensing to dispense liquor, and that Chapter 944 of the Wisconsin Statutes was in full force
121 and effect during the 1970-1971 license year, and continue to be in force and effect, and could have a bearing on the privilege of holding a license to dispense liquor.

30. That for purposes of public hearings the three applicants for licenses, Richard Misurelli, David Robers, Go-Go of Racine, Inc., were segregated out from the other applicants and were handled as a group. That the only specification or charge by either the City Council or the License Committee officially given to the plaintiff Misurelli was contained in the Report and Recommendation as the reasons for denial of the application as required by Section 176.05 (8), Wis. Stats.

31. That all of the hearings held by the defendant City were legislative type trials, and that none of said hearings were trial-type hearings in which speakers were placed under oath, cross-examined or any record made of such speeches.

32. That the Plaintiff Misurelli's method and manner of doing business during the year 1970-1971 contained in the License Committee Report and Recommendation recommending denial of his license application refers in part to the nude

dance entertainment offered by the Pussy Cat Lounge during said period. That the defendant City relied on such dance entertainment as one of the factors producing the effects enumerated in paragraphs (a) through (f) of said Resolution in denying of the license application of Misurelli.

33. That Alderman Frank Barry, Chairman of the Licensing Committee, was aware that Misurelli had some ownership interest in the Pussy Cat Lounge during the license year 1970-1971, (although counsel objects to the materiality of this stipulated fact).

122 Dated this *16* day of September, A.D., 1971.

/s/ Victor C. Cairo
Victor C. Cairo
Attorney for the Plaintiff

/s/ Edward A. Krenzke
Edward A. Krenzke
Attorney for the Defendant

123 EXHIBIT A

TO THE HON. MAYOR AND COMMON COUNCIL:

Your Committee on LICENSE & WELFARE to whom was referred Item 21 (6) of May 18 being item 11 D of May 4, 1971 being the following applications for Class B Retail Fermented Malt Beverage and Intoxicating Liquor License:

Go-Go of Racine Inc.	201 Main Street
Richard A. Misurelli	1209 Douglas Avenue
Dave H. Robers	1814 - 16th Street

Respectfully report and recommend — That after two public hearings, and based upon testimony submitted at such hearings, each of the above applicants, by reason of their method and manner of operation of their business during the license

year 1970-71, have contributed substantially to the creation of the following conditions within and/or concerning the City:

a) A change of reputation of the City of Racine from that of a "City of Advantages" to that of a city of ill repute.

b) An atmosphere that now attracts into the community an undesirable element which has fostered an increase of prostitution, promiscuity and VD.

c) A sensitivity on the part of the community to the indecent activity within the premises which now discourages residents from having relatives and friends visit the City.

d) A sensitivity on the part of residents to indecency within the premises that has adversely effected family and home life of the community and which now causes concern on the part of parents for the moral well-being of their children.

e) An atmosphere of fear and concern on the part of citizens for the activity that goes on in these premises and which now causes them to refrain from entering business districts where these premises are located, and in turn causing loss of patronage to other merchants in the area.

(continued — back page)

CHAIRMAN OF COMMITTEE

124 REPORT BY

LICENSE & WELFARE
COMMITTEE

3 applications for Class B Retail
Fermented Malt Beverage & Intoxicating
Liquor License 1971-1972

f) That there have been complaints of feuding between the management of two of the premises (Pussy Cat and Tubby's) and threats of violence between the two; also, there exists complaints against one of the premises (Tubby's) of having patrons physically ejected when the patron failed to spend sufficient money across the bar; as well as complaints of minors in two of the premises (Tubby's and Pussy Cat).

That, therefore, in the best interest of the welfare and morals of the community, it is recommended that these license applications be denied.

Your committee further recommends that in view of the objections voiced to the issuance of licenses to organizations whose by-laws contain exclusionary clauses, all Club Licenses and all Class "B" Licenses issued to organizations whose by-laws contain exclusionary clauses, for license year 1971-72, are subject to review and reconsideration upon issuance of the expected decision from the United States Supreme Court as to the effect of "exclusionary clauses" on the subject matter of issuance of liquor licenses.

125 **MEMORANDUM OPINION AND ORDER THAT TEMPORARY RESTRAINING ORDER OUTSTANDING IS CONTINUED UNTIL FURTHER ORDER OF THE COURT. Filed October 21, 1971.**

This opinion and order is printed in the Appendix to the Jurisdictional Statement at pages 112-113.

133 **ORDER GRANTING LEAVE TO ROBERT W. WARREN, ATTORNEY GENERAL OF WISCONSIN, TO INTERVENE AND BE MADE A PARTY DEFENDANT. Filed December 17, 1971.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BRUNO, et al., v. CITY OF KENOSHA, et al.

Plaintiffs in the above-captioned actions have challenged the constitutionality of section 176.05 of the Wisconsin Statutes.

Robert W. Warren, as Attorney General of the State of Wisconsin, by George L. Frederick, Assistant Attorney General, State of Wisconsin, has moved to intervene as a party defendant in the above-captioned actions, claiming an interest in the subject of the litigation and a question of law in common with the impleaded defendants.

The motion is appropriate and in good order. Accordingly, IT IS THEREFORE ORDERED that Robert W. Warren, as Attorney General of Wisconsin, is hereby granted leave to intervene in the above-captioned actions and is made a party defendant for the purpose of litigating the question of law he has in common with the original defendants, the constitutionality of section 176.05 of the Wisconsin Statutes.

134 Dated at Milwaukee, Wisconsin, this *17th* day of December, 1971.

BY THE COURT:

/s/ John W. Reynolds
John W. Reynolds
District Judge

141 **DEFENDANT'S ANSWER TO AMENDED COMPLAINT. Filed March 31, 1972.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RICHARD A. MISURELLI and
TERRANCE McCUE,
Plaintiffs,

v.

Case No.
71-C-316

CITY OF RACINE,
a Wisconsin Municipal Corporation,
Defendant.

Now comes defendant, City of Racine, by its attorneys, Jack Harvey and Edward A. Krenzke of the City Attorney's Office, and in answer to plaintiffs' Amended Complaint in the above entitled matter, admits, denies and alleges as follows:

FIRST: Admits the allegations in paragraphs 1, 2 and 3 of the Amended Complaint relating to the identity of parties.

SECOND: In answer to paragraph 4 of the Amended Complaint, defendant denies that Court has jurisdiction of plaintiffs' action.

THIRD: In answer to paragraph 5 of the Amended Complaint, defendant denies the allegations therein contained and in further answer thereto alleges that plaintiff

McCue was the holder of a Class "B" retail liquor license for the license year 1970-71 in his name only and that plaintiff Misurelli was an applicant for a Class "B" retail liquor license for the license year 1971-72 in his name only; and that the applications and records on file with the City Clerk of Racine show no interest on the part of plaintiff Misurelli, in the plaintiff McCue's license for the year 1970-71 and that the
142 same records show no interest on the part of plaintiff McCue in the license for which application was made by plaintiff Misurelli for the year 1971-72, and that under the Wisconsin scheme for issuing liquor licenses any claimed interest in such license not disclosed on the official records of the City are wholly irrelevant and not recognized for licensing purposes.

FOURTH: In answer to paragraph 6 of the Amended Complaint, defendant admits that all taverns survive primarily by virtue of the dispensation of intoxicating liquors, but alleges that Class "B" retail liquor licenses are issued to individuals or corporations personally rather than to premises, whether designated Pussycat Lounge or any other name, and that no retail liquor license has been issued to Pussycat Lounge.

FIFTH: In answer to paragraph 7 of the Amended Complaint, defendant admits that the Class "B" retail liquor license for the year 1970-71 was issued to plaintiff McCue, but denies that the same was subject to any partnership interest on the part of plaintiff Misurelli, and that the records on file in the office of the City Clerk of Racine, Wisconsin, show such license to have been issued to plaintiff McCue and without any financial interest by any other person.

SIXTH: In answer to paragraph 8 of the Amended Complaint, defendant admits that plaintiff Misurelli made application for a Class "B" retail liquor license for the year 1971-72, but denies that it was for the purpose of the continuance of any partnership business, and denies that defendant was so informed, and alleges that the application
143 for the liquor license for the year 1971-72, as made by plaintiff Misurelli, was made in his name only and asserted that no other person had any financial interest in such license.

SEVENTH: In answer to paragraph 9 of the Amended Complaint, defendant denies that the Common Council acted on June 1, 1971, to deny the application; and in further answer thereto alleges that the Common Council on June 15, 1971, denied the application of plaintiff Misurelli, there being no application by plaintiff McCue, upon which any action could be taken. And in further answer to said paragraph 9, defendant admits that after the denial on June 15, 1971, of the application for the license by plaintiff Misurelli that no further action was taken by defendant, and alleges that such action is final in the absence of plaintiff Misurelli seeking a review in a state court by way of certiorari and/or in the absence of plaintiff Misurelli pursuing his remedy in the state court pursuant to the provisions of Sec. 66.054 (14), all of which are provided under the Wisconsin statutory scheme of issuing retail liquor licenses.

EIGHTH: In answer to paragraph 10 of the Amended Complaint, defendant admits the allegations therein contained.

NINTH: In answer to paragraph 11 of the Amended Complaint, defendant alleges that it did not deny the Class "B" retail liquor license to plaintiff Misurelli in the manner

set forth in a through b; and in further answer thereto, affirmatively alleges that such license was denied after proceeding under the Wisconsin statutory scheme of issuing Class "B" retail liquor licenses, and in accordance with the decision of Ruffalo vs. Kenosha, 38 Wis. 2d 518, and after
144 having been presented with a report of its License and Welfare Committee which is hereto attached and marked Exhibit "A" and made a part hereof as though fully set forth.

In further answer to said paragraph 11, defendant alleges that plaintiff Misurelli sought no court review by way of certiorari in a state court of the reasons set forth in the Committee Report marked Exhibit "A", nor did plaintiff Misurelli petition any state court, pursuant to Sec. 66.054 (14), for a review of the evidence supporting the reasons set forth in the Committee Report marked Exhibit "A" hereto attached.

TENTH: In answer to paragraph 12 of the Amended Complaint, defendant denies that it acted without any perceptible standards.

And in answer to plaintiffs second cause of action set forth in their Amended Complaint in the above entitled matter, defendant admits, denies and alleges as follows:

ELEVENTH: In answer to paragraph 13 of the Amended Complaint, defendant admits the allegations therein set forth.

TWELFTH: In answer to paragraph 14 of the Amended Complaint, defendant denies that it rejected the license application of plaintiff Misurelli because of the nude dancing and alleges that its reasons for denial are fully set forth in Exhibit "A" hereto attached and made part hereof.

THIRTEENTH: In answer to paragraph 15 of the Amended Complaint, defendant denies that it was using its licensing power for the purpose of censoring conduct which it deemed undesirable and objectionable, and denies that it made any determination without any prior judicial adversary
145 proceeding finding of the obscene; and in further answer to said paragraph 15, alleges that it lawfully denied the license application of plaintiff Misurelli on the grounds set forth in Exhibit "A" hereto attached.

FOURTEENTH: In answer to paragraph 16 of the Amended Complaint, defendant denies that plaintiffs have been deprived, under color of law and under customs and usages of the State of Wisconsin, of any right of freedom of speech and expression as guaranteed by the First and Fourteenth Amendment of the Constitution of the United States.

FIFTEENTH: In answer to paragraph 17 of the Amended Complaint, defendant alleges that it has not denied plaintiffs due process of law to the irreparable detriment of plaintiffs.

SIXTEEN: In answer to paragraph 18 of the Amended Complaint, defendant admits the allegations therein set forth.

SEVENTEENTH: In answer to paragraph 19, defendant denies that plaintiffs have an investment of $20,000.00 or more in their business and denies that they face imminent irreparable damage and injury.

EIGHTEENTH: In answer to paragraph 20 of the Amended Complaint, defendant alleges that plaintiffs have an adequate remedy at law either by way of certiorari in the state courts, or by way of further administrative review under the provisions of Sec. 66.054 (14) of the Wis. Stats.

In answer to plaintiffs third cause of action as set forth in this Amended Complaint, defendant admits, denies and alleges as follows:

146 NINETEENTH: In answer to paragraph 21 of the Amended Complaint, defendant admits the allegations therein set forth and in addition, alleges that it has acted pursuant to the statutory scheme of issuing Class "B" retail liquor licenses as provided by Chapter 176 and Sec. 66.054 of the statutes of the State of Wisconsin, and the rulings of the Wisconsin Supreme Court in the case of Ruffalo vs. Kenosha, 38 Wis. 2d 518, and other Wisconsin Supreme Court decisions interpreting the provisions of Chapter 176 and Sec. 66.054, and especially subparagraph (14) therein.

TWENTIETH: In answer to paragraph 22 of the Amended Complaint, defendant denies that its acts pursuant to said statutes and under the color of law and under customs and usages of the State of Wisconsin, had deprived plaintiffs of their right and due process of law as guaranteed to them as a citizen of the United States.

TWENTY-FIRST: In answer to paragraph 23 of the Amended Complaint, defendant denies that the statute of laws as enforced and administered by defendant are unconstitutional for any of the reasons set forth in a through e of said paragraph 23.

WHEREFORE, defendant prays:

a. That the Court deny plaintiffs any mandatory injunction, requiring defendant to issue a Class "B" retail liquor license and further prays that the temporary mandatory restraining order now outstanding be dissolved.

b. Judgment dismissing plaintiffs Complaint.

c. Allowance to defendant of their costs herein, including reasonable attorneys' fees, disbursements, and such other relief as the Court may see fit.

147

Respectfully submitted,

JACK HARVEY
City Attorney
EDWARD A. KRENZKE
Deputy City Attorney

148

TO THE HON. MAYOR AND COMMON COUNCIL:

Your Committee on LICENSE & WELFARE to whom was referred Item 21 (6) of May 18 being item 11 D of May 4, 1971 being the following applications for Class B Retail Fermented Malt Beverage and Intoxicating Liquor License:

Go-Go of Racine Inc.	201 Main Street
Richard A. Misurelli	1209 Douglas Avenue
Dave H. Robers	1814-16th Street

Respectfully report and recommend — That after two public hearings, and based upon testimony submitted at such hearings, each of the above applicants, by reason of their method and manner of operation of their business during the license year 1970-71, have contributed substantially to the creation of the following conditions within and/or concerning the City:

a) A change of reputation of the City of Racine from that of a "City of Advantages" to that of a city of ill repute.

b) An atmosphere that now attracts into the community an undesirable element which has fostered an increase of prostitution, promiscuity and VD.

c) A sensitivity on the part of the community to the indecent activity within the premises which now discourages residents from having relatives and friends visit the City.

d) A sensitivity on the part of residents to indecency within the premises that has adversely effected family and home life of the community and which now causes concern on the part of parents for the moral well-being of their children.

e) An atmosphere of fear and concern on the part of citizens for the activity that goes on in these premises and which now causes them to refrain from entering business districts where these premises are located, and in turn causing loss of patronage to other merchants in the area.

(continued — back page)

CHAIRMAN OF COMMITTEE

Exh. "A"

149 REPORT BY

LICENSE & WELFARE
COMMITTEE

3 applications for Class B Retail
Fermented Malt Beverages & Intoxicating
Liquor License 1971-1972

f) That there have been complaints of feuding between the management of two of the premises (Pussy Cat

and Tubby's) and threats of violence between the two; also, there exists complaints against one of the premises (Tubby's) of having patrons physically ejected when the patron failed to spend sufficient money across the bar; as well as complaints of minors in two of the premises (Tubby's and Pussy Cat).

That, therefore, in the best interest of the welfare and morals of the community, it is recommended that these license applications be denied.

Your committee further recommends that in view of the objections voiced to the issuance of licenses to organizations whose by-laws contain exclusionary clauses, all Club Licenses and all Class "B" Licenses issued to organizations whose by-laws contain exclusionary clauses, for license year 1971-72, are subject to review and reconsideration upon issuance of the expected decision from the United States Supreme Court as to the effect of "exclusionary clauses" on the subject matter of issuance of liquor licenses.

Exh. "A"

150 STATE OF WISCONSIN)
) ss.
COUNTY OF RACINE)

ALBERT A. REID, being first duly sworn, on oath deposes and says that he is the City Clerk of the City of Racine and that as such he is authorized to make this oath on and behalf of the above named defendant; that he makes this verification on behalf of the City of Racine; that he has read the foregoing Answer and knows the contents thereof,

and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and to those matters he believes it to be true.

/s/ Albert A. Reid
Albert A. Reid

Subscribed and sworn to before me
this 29th day of March, 1972.

/s/ Edward A. Krenzke
Notary Public, Racine County, Wisconsin
My Commission is permanent.

151 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT WITH AFFIDAVIT. Filed April 7, 1972. (Title omitted in printing.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TO: Edward Krenzke
Attorney for City of Racine

Earl Warren
Attorney General
State of Wisconsin

Please take notice that on the 21st day of April, 1972, at 9:00 o'clock in the morning, at the Court rooms of the the United States District Court, Milwaukee, Wisconsin, the undersigned as attorneys for the plaintiffs in the above actions, will move the Court for summary judgment in favor of the plaintiffs and against the defendants in the above entitled actions.

152 That said motion will be based on the attached Affidavit of Victor C. Cairo.

Dated this 5th day of April, 1972.

/s/ Victor C. Cairo
Victor C. Cairo

/s/ Jay Schwartz
Jay Schwartz

Attorneys for the Plaintiffs

153 STATE OF WISCONSIN)
RACINE COUNTY) ss.

Victor C. Cairo, being first duly sworn on oath, deposes and says that he is one of the attorneys for the plaintiffs in the above actions; that he makes this affidavit in support of plaintiffs' motion for summary judgment against the defendants in the above actions; that the plaintiffs are entitled to summary judgment on the following grounds:

1. That all the material facts in these cases are undisputed and have been stipulated to by the plaintiffs and defendants.

154 2. That the sole issues between the parties hereto are questions of law to be determined by this court.

3. That plaintiffs are entitled to judgment in their favor and against the defendants as a matter of law in accordance with the demands of their amended complaints.

/s/ Victor C. Cairo

Subscribed and sworn to before me
this 5th day of April, 1972.

/s/ Morris Shovers
Notary Public, Racine County, Wis.
My Term is Permanent.

156 **DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT WITH AFFIDAVIT. Filed April 10, 1972. (Title omitted in printing.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TO: Victor C. Cairo
310 Fifth Street
Racine, Wisconsin

Jay Schwartz
704 Park Avenue
Racine, Wisconsin

Attorneys for Plaintiffs

Please take notice that on the 21st day of April, 1972, at 9:00 o'clock in the morning, at the Court rooms of the United States District Court, Milwaukee, Wisconsin, the undersigned as attorney for defendant in the above action, will move the Court for summary judgment in favor of the defendant and against the plaintiffs in the above entitled action

That said motion will be based on the attached Affidavit of Edward A. Krenzke.

Dated this 7th day of April, 1972.

/s/ Edward A. Krenzke
Edward A. Krenzke
Attorney for Defendant.

155 STATE OF WISCONSIN)
) ss.
RACINE COUNTY)

EDWARD A. KRENZKE, being first duly sworn on oath, deposes and says that he is one of the attorneys for

the defendant in the above action; that he makes this Affidavit in support of defendant's motion for summary judgment against the plaintiffs in the above action; that the defendant is entitled to summary judgment on the following grounds:

1. That all the material facts in this case are undisputed and have been stipulated to by the plaintiffs and the defendant.

2. That the sole issues between the parties hereto are questions of law to be determined by this Court.

3. That defendant is entitled to judgment in their favor and against the plaintiffs as a matter of law in accordance
157 with the demands of their Answer to the Amended Complaints.

/s/ Edward A. Krenzke
Edward A. Krenzke

Subscribed and sworn to before me
this 7th day of April, 1972.

/s/ Louis J. Roshar
Notary Public, Racine County, Wisconsin
My Commission is Permanent.

158 **NOTICE OF MOTION OF INTERVENING DEFENDANT FOR SUMMARY JUDGMENT WITH AFFIDAVIT. Filed April 17, 1972. (Title omitted in printing.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TO: Mr. Jay Schwartz
Attorney at Law
704 Park Avenue
Racine, WI 53403

Mr. Victor C. Cairo
Attorney at Law
310 Fifth Street
Racine, WI 53403

Mr. Jerome J. Ruetz, Jr.
Go-Go of Racine, Inc.
P. O. Box 1051
Racine, WI 53405

Mr. Michael S. Fisher
Kenosha City Attorney
625 2nd Street
Kenosha, WI 53140

Mr. Edward A. Krenzke
Assistant City Attorney
City Hall
Racine, WI 53403

PLEASE TAKE NOTICE that, on the 21st day of April, 1972, at 9:00 in the morning, or at such other time as the court may direct, at the court rooms of the United States District Court, Milwaukee, Wisconsin, the undersigned as attorney for the intervening defendant, Robert W. Warren, Attorney General of Wisconsin, will move the court for summary judgment in favor of the intervening defendant and against the plaintiff in all the actions as captioned above.

159 The said motion will be based on the attached affidavit of George L. Frederick, Assistant Attorney General, State of Wisconsin.

Dated at Madison, Wisconsin, this 13th day of April, 1972.

ROBERT W. WARREN
Attorney General of Wisconsin

GEORGE L. FREDERICK
Assistant Attorney General

Attorneys for Intervening Defendant

P. O. Address:

114 East, State Capitol
Madison, Wisconsin 53702

160 STATE OF WISCONSIN)
) ss.
DANE COUNTY)

GEORGE L. FREDERICK, being first duly sworn on oath, deposes and says that he is an attorney for the intervening defendant, Robert W. Warren, Attorney General of Wisconsin, who has intervened in all the above captioned actions. The affiant makes this affidavit in support of the intervening defendant's motion for summary judgment against all the plaintiffs in all the above captioned actions. The affiant states that the intervening defendant is entitled to summary judgment on the following grounds:

1. The material facts in the above captioned actions are uncontroverted;

2. The sole issues between the parties hereto are questions of law to be determined by this court;

3. The intervening defendant is entitled to judgment in his favor and against all the plaintiffs in all the above captioned actions as a matter of law;

WHEREFORE, the intervening defendant prays that the court grant judgment as follows:

a. Deny all plaintiffs in the above captioned actions any mandatory injunction as prayed for by plaintiffs;

b. Dissolve the temporary mandatory restraining orders now outstanding;

c. Dismiss the complaints of all the plaintiffs in all the above captioned actions;

d. Allow to the intervening defendant his costs herein, including reasonable attorneys' fees, disbursements and such other relief as the court may see fit.

George L. Frederick
Assistant Attorney General
State of Wisconsin

(Jurat omitted in printing.)

164 **DECISION AND ORDER. FILED AUGUST 2, 1972.**

This decision and order is printed in the Appendix to the Jurisdictional Statement at pages 117-128.

177 **JUDGMENT. FILED AUGUST 4, 1972.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

PETER G. BRUNO, et al.

v.

CITY OF KENOSHA,
a Wisconsin Municipal Corporation, et al.

This action came on for hearing on cross motions for summary judgment before the Court, Honorable Thomas E. Fairchild, Judge, U.S. Court of Appeals for the Seventh Circuit, John W. Reynolds, Chief Judge, U.S. District Court, ED of Wisconsin, Myron L. Gordon, Judge, U.S. District
178 Court, ED of Wisconsin, presiding, and the issues having been duly heard, and a decision having been duly rendered, and the court having granted plaintiffs' motion for summary judgment.

IT IS ORDERED that 176.05 (1) and 176.05 (8), of the Wisconsin Statutes, insofar as they permit renewal of liquor licenses to be denied without permitting the applicants an opportunity for an adversary-type hearing in which the applicant is given timely notice of the reasons urged for denial and an opportunity to present, confront, and cross-examine witnesses under oath with a verbatim transcript, be and they hereby are declared unconstitutional.

IT IS FURTHER ORDERED that the defendant City of Kenosha/Racine is enjoined from denying any application for

the renewal of a liquor license as long as 176.05 (1) and 176.05 (8) of the Wisconsin Statutes fail to require a hearing meeting the standards of due process set forth in the opinion.

IT IS FURTHER ORDERED that until such time as plaintiffs' license applications are acted upon in a manner commensurate with the due process clause of the Fourteenth Amendment as set forth in the opinion, the defendant City of Kenosha-Racine shall grant plaintiffs Class "B" Fermented Malt Beverage and Intoxicating Liquor Licenses.

DATED AT MILWAUKEE, WISCONSIN, this 14th day of August, 1972.

/s/ Ruth W. La Fave
Clerk of Court

179 **NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES. Filed September 1, 1972.**

The notice of appeal is printed in the Appendix to the Jurisdictional Statement at page 131.

199 **TEMPORARY RESTRAINING ORDER TO CITY OF KENOSHA TO ISSUE LIQUOR LICENSE. Filed July 2, 1971.**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SLEEPY'S, INC.,
Plaintiff,

-vs- 71-C-332

CITY OF KENOSHA,
Defendant.

The motion for a temporary mandatory restraining order having regularly come before the Federal District Court for the Eastern District of Wisconsin at 4:00 o'clock in the afternoon of June 30, 1971:

On reading the affidavits, briefs and the verified complaint of the plaintiff in support of the motion and the affidavits of the defendant in opposition thereto, and after hearing Mr. Jay Schwartz, Esq., attorney for the plaintiff, and Mr. Mike Fisher, Esq., attorney for the defendant in opposition to the motion:

IT IS ORDERED that City of Kenosha shall issue forthwith upon the tender of appropriate fees, a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor License to Sleepy, Inc, and to take all necessary steps to effectuate the same, until further order of the Court.

Dated at Milwaukee, Wisconsin, this *2d* day of July, A.D., 1971. *Nunc pro tunc June 30, 1971.*

BY THE COURT:

/s/ John W. Reynolds
United States District Judge

282 **ANSWER AND AFFIRMATIVE DEFENSE. Filed July 23, 1971. (Title omitted in printing.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Now comes the defendant by its attorneys, Michael S. Fisher and Terry L. Constant, in answer to the complaint of the plaintiff respectfully admits, denies and alleges as follows:

1. Answering paragraphs 1 through 3; admits the allegations contained therein.

2. Answering paragraph 4; denies the allegations contained therein and puts plaintiff to its proof.

3. Answering paragraphs 5 through 8; admits the allegations contained therein.

4. Answering paragraph 9; denies that the Common Council acted to deny its license on June 14, 1971, and alleges said act took place on June 7, 1971.

5. Answering paragraph 10; admits the allegations contained therein.

6. Answering paragraph 11; admits and denies as follows: denies the allegations contained in a., c., d., e., f. and h. and puts plaintiff to its proof. Admits the allegations in

b. and g. as to the fact that no person was sworn prior to speaking but alleges that plaintiff was given the opportunity and did, either personally or through its attorney, testify.

7. Answering paragraph 12; denies the allegations con-
283 tained therein and puts plaintiff to its proof.

8. Answering paragraph 13; admits plaintiff features dancing and also features nudity but alleges insufficient knowledge or information upon which to form a belief that said dancing and costuming is a means of expression and therefore puts plaintiff to its proof.

9. Answering paragraphs 14 through 16; denies the allegations contained therein and puts plaintiff to its proof.

10. Answering paragraph 17; alleges insufficient information or knowledge upon which to form a belief and therefore puts plaintiff to its proof.

11. Answering paragraph 18; denies the allegations contained therein and puts the plaintiff to its proof.

12. Answering paragraph 19; admits that the denial of said license denied plaintiff the right and ability to operate a tavern but denies any inference that said denial was illegal or tainted.

13. Answering paragraph 20; alleges insufficient knowledge or information upon which to form a belief and therefore puts plaintiff to its proof.

14. Answering paragraph 21; denies the allegations contained therein and puts plaintiff to its proof.

AFFIRMATIVE DEFENSE

Now comes the defendant by its attorneys, Michael S. Fisher and Terry L. Constant, by way of affirmative defense alleges as follows:

1. That defendant has acted under the authority of Chapter 176 of the Laws of the State of Wisconsin, pursuant to the delegation of power granted to the defendant municipality by the State of Wisconsin authorizing the issuance of licenses for the dispensing of liquor and beer.

2. That defendant did afford the plaintiffs legislative hearings which plaintiffs attended, all in accordance with the
284 requirements of Chapter 176 of the Laws of the State of Wisconsin, as interpreted by the legislature of the State of Wisconsin and the Wisconsin Supreme Court.

3. That plaintiff refused to remain at the public hearing on May 21, 1971, at which time subject license was considered before the Committee on Finance, thereby waiving its right to be heard.

4. That no plaintiff, except Fred Kauzrich and Bruce Bleashka, availed themselves of the opportunity to be heard at a public hearing on June 21, 1971, prior to voting on the issue of reconsideration of the vote taken on June 21, 1971.

5. That plaintiff had notice of every meeting held at which its license could be considered by virtue of the statutory procedure for licensing as set forth in Chapter 176 of the Wisconsin Statutes, written notice, verbal notice, or, all three and plaintiff and/or legal counsel for plaintiff did appear

at every meeting at which its license was discussed and was given the opportunity to be heard.

MICHAEL S. FISHER and
TERRY L. CONSTANT,
Attorneys for the Defendant

285 STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

MICHAEL S. FISHER, being first duly sworn, on oath deposes and says that he is one of the attorneys for the defendant in this action; that he was directed and authorized by the defendant to plead in this action; that he has read the above and foregoing Answer and Affirmative Defense, knows the contents thereof, and the facts therein stated are true to his own knowledge and belief, except as to those matters stated on information and belief and to those matters he believes them to be true; that the basis of his information and belief is from documents, reports and personal knowledge and that he is authorized to execute this verification on behalf of the defendants in this action.

/s/ Michael S. Fisher
MICHAEL S. FISHER

Subscribed and sworn to before me
this *22nd* day of *July*, 1971.

/s/ Nellie Repka
Notary Public, Kenosha County, Wis.

My Commission Expires: *3-4-74*

315 **MOTION OF DEFENDANT, WITH SUPPORTING AFFIDAVITS, THAT TEMPORARY RESTRAINING ORDER ENTERED ON JULY 2, 1971, BE MODIFIED. Filed March 22, 1972. (Title omitted in printing.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Now comes the defendant in the above entitled action by its attorney, Michael S. Fisher, City Attorney for the City of Kenosha, Wisconsin, and moves the Court on the basis of the attached Affidavit as follows:

That the Temporary Restraining Order entered on July 2, 1971, in the above entitled action be modified and lifted so as to permit the Common Council of the City of Kenosha, pursuant to Sections 176.11 and 176.12 WIS. STATS., to act upon a complaint filed with the City Clerk of the City of Kenosha by Joseph H. Trotta on the 14th day of March, 1972.

/s/ Michael S. Fisher
Michael S. Fisher,
City Attorney,
Kenosha, Wisconsin.

316 STATE OF WISCONSIN)
) ss: *AFFIDAVIT*
COUNTY OF KENOSHA)

Gail F. Procarione, being first duly sworn, on oath deposes and says:

1. That he is City Clerk of the City of Kenosha, Wisconsin.

2. That heretofore on the 2nd day of July, A.D., 1971, the following Temporary Restraining Order was issued in Civil Action entitled *Sleepy's Inc.* vs. *City of Kenosha* being Civil Action No. 71-C-332,

> "IT IS ORDERED that City of Kenosha shall issue forth with upon the tender of appropriate fees, a Class "B" Retail Fermented Malt Beverage and Intoxicating Liquor License to Sleepy, Inc. and to take all necessary steps to effectuate the same, until further order of the Court."

3. That the City of Kenosha has been ordered by the Court to issue and maintain those licenses until further order of the Court.

4. That on the 14th day of March 1972, there was filed with this office by Joseph H. Trotta the attached Complaint in Affidavit form and that thereafter said Complaint was brought before the Common Council on March 20, 1972, and on said date said Common Council, after due consideration of said Complaint adopted the following motion:

> "That a revocation hearing be held on April 13, 1972, at 7:00 P.M. in Council Chambers in the Municipal Building, 625 - 52nd Street, Kenosha, Wisconsin, and in accordance with State Statutes, a court reporter shall be present and the license holder shall be permitted to present witnesses and testify on his behalf and cross examine all witnesses presented on behalf of the City; the holding of said hearing shall be contingent on modification of the outstanding Court Order.

317 Further, That City Attorney be directed to petition the Court to modify the Restraining Order in order to proceed with the hearing on the Complaint as provided by law."

5. That copies of said charges have been sent to the license holder and to his attorney so that they may be informed as to the specific charges.

That this Affidavit is made for the purpose of supporting a Motion to modify the Temporary Restraining Order heretofore issued on the 2nd day of July, 1971, as it relates to Sleepy's Inc.

/s/ Gail F. Procarione
Gail F. Procarione,
City Clerk,
City of Kenosha

Subscribed and sworn to before me
this *21st* day of March, 1972.

/s/ Michael S. Fisher
Notary Public, Kenosha County, Wisconsin.

My Commission: *Permanent*

318 STATE OF WISCONSIN)
) SS. *AFFIDAVIT*
KENOSHA COUNTY)

JOSEPH H. TROTTA, being first duly sworn, on oath deposes and says:

First: That he is the Inspector of Police for the City of Kenosha, Wisconsin, and is a resident of the City

of Kenosha, Kenosha County, State of Wisconsin, and is over twenty-one (21) years of age.

Second: That presently at the premises located at 5629 - 24th Avenue in the City of Kenosha, Wisconsin, there is a business establishment known as the Cheetah Lounge, on which premises is conducted a tavern business.

Third: That he has examined the records in the office of the City Clerk and has found that the following license has been issued by the City of Kenosha for said premises and that the same is in full force and effect for the 1971-72 license year:

To Sleepy's, Inc., a Wisconsin corporation, a Class "B" Retail Beer and Liquor license for the License period of 1971-1972 for the premises located at 5629 - 24th Avenue.

That Martin L. DeFoor, 5629 - 24th Avenue, Kenosha, Wisconsin, is a duly appointed agent for said corporation as required by Sections 66.054 (8) and 176.05 (13) Wis. Stats.

Fourth: That he has examined the Police Department records and compared them with the records of Kenosha County Court and has spoken with Officers under his command after which he filed the following complaint against the license holder and the licensed premises: That since July 2, 1971, there have been two convictions for lewd and lacivious
319 behavior on the licensed premises to wit: Carolyn Blevens and Karen Simonds, both convicted on

September 22, 1971. That since July 2, 1971, there have been two (2) arrests for lewd and obscene performances on the licensed premises.

That since July 2, 1971, there have been numerous arrests and some convictions for soliciting for prostitution in the immediate area of the licensed premises.

That since July 2, 1971, there have been numerous reports from Police Officers that women known to be prostitutes are frequently in or about the immediate area of the licensed premises.

That, based upon the files, records and information received at the Kenosha Police Department, he is requesting revocation proceedings be commenced under Section 176.11, Wisconsin Statutes.

That this Affidavit is made for the purpose of making a complaint in writing and under oath, pursuant to Section 176.11, Wis. Stats., against Sleepy's, Inc., a holder of a Class "B" Retail Beer and Liquor License on the asserted grounds that said licensee has violated the conditions for such license issued by the City of Kenosha, Wisconsin.

/s/ Joseph H. Trotta
JOSEPH H. TROTTA

Subscribed and sworn to before me
this *14th* day of March, 1972.

/s/ Michael S. Fisher
Michael S. Fisher, Notary Public,
Kenosha County, Wisconsin.

My Commission is Permanent.

320 NOW COMES Burton A. Scott and alleges and shows to the Court as follows:

1. That affiant is the duly elected and qualified and acting District Attorney in and for Kenosha County, Wisconsin.

2. That there are now pending in Kenosha County two criminal cases alleging violations of Section 944.21 (1) (d), of the Wisconsin Statutes, and arising out of performances by female entertainers on the Class "B" licensed premises known as "Cheetah Lounge", to wit:

State of Wisconsin v. Brenda F. Fillipi, a true and correct copy of criminal complaint which is the basis for said action being attached hereto and incorporated herein by reference. Said defendant is scheduled for jury trial on April 11, 1972; and

State of Wisconsin v. Valerie Kitover, a true and correct copy of criminal complaint which is the basis for said action being attached hereto and incorporated herein by reference. Said defendant has waived preliminary hearing and has been bound over to Circuit Court in Kenosha County for trial.

3. That there is presently pending against Martin DeFoor, the agent for the corporation which holds the license for the "Cheetah Lounge", a criminal action alleging a violation of Section 944.21 (1) (d), a true and correct copy of the complaint upon which said criminal action is based is attached hereto and incorporated herein by reference.

4. That this affidavit is made in support of the City of Kenosha motion to modify the restraining order in the above

321 entitled action in order to allow the City of Kenosha to hold a revocation hearing in regard to the continued operation of the "Cheetah Lounge" as a licensed premises.

/s/ Burton A. Scott
Burton A. Scott,
District Attorney in and for
Kenosha County, Wisconsin

Subscribed and sworn to before me
this *16th* day of March, A.D. 1972.

/s/ Robert V. Baker III
Notary Public, Kenosha County, Wisconsin
My commission is permanent.

322 STATE OF WISCONSIN,
COUNTY COURT (II) COURT
KENOSHA COUNTY

STATE OF WISCONSIN,
Plaintiff, CRIMINAL COMPLAINT

vs.

BRENDA F. FILIPPI File No. *9802*
935 Chicago Avenue
Hammond, Indiana,
Address

Defendant.

Robert Loewen, being first duly sworn on oath says that on October 27, 1971, at the City of Kenosha, in said County, the defendant did: intentionally and feloniously perform a lewd, obscene and indecent performance; in that at approximately 9:35 P.M. on said date the said defendant was observed

by City of Kenosha Police Officers Anthony Marabelli and Cyril Ellison dancing on a stage at the Cheetah Lounge, located at 5627 - 24th Avenue in said city; that during said dance said officers observed the defendant remove from her body all of her clothing; that they further observed said defendant removing pubic hairs from her vaginal area and passing the same to patrons in said Cheetah Lounge; that during said dance said defendant gyrated with her body in a manner fashioned after sexual intercourse; said conduct by the defendant being contrary to Section 944.21 (1) (d), Wis. Stats., and prays that said defendant be dealt with according to law; and that the basis for the complainant's charge of such offense is: that complainant is a City of Kenosha Police Officer and has knowledge of the above alleged facts from reading the reports of City of Kenosha Police Officers Cyril Ellison and Anthony Marabelli, eyewitnesses in which reports the above alleged facts are set forth; that complainant believes said Cyril Ellison and Anthony Marabelli to be reliable because they are eyewitnesses to the facts above alleged.

/s/ Robert Loewen
Complainant

Subscribed and sworn to before me on
November 2, 1971.

/s/ Mario J. Ventura, Jr.
Asst. District Attorney Judge Court Commissioner

Approved for filing */s/ Mario J. Ventura, Jr.*
Asst. District Attorney Judge Court Commissioner

I find that probable cause (exists) (does not exist) that the crime was committed by the defendant and order that he be (held to answer thereto) (released forthwith).

Dated November 2, 1971

/s/ John E. Malloy
Judge Court Commissioner

323

STATE OF WISCONSIN,
COUNTY COURT (II) COURT,
KENOSHA COUNTY

STATE OF WISCONSIN,
Plaintiff, CRIMINAL COMPLAINT

vs.

VALERIE A. KITOVER File No.
5917 N. Kenmore
Chicago, Illinois,
Address

Defendant.

William P. Schmitz, being first duly sworn on oath says that on February 24, 1972, at the City of Kenosha, in said County, the Defendant did: intentionally and feloniously perform a lewd, obscene and indecent performance; in that at approximately 9:45 P.M. on said date, said defendant was observed by City of Kenosha Police Officer William P. Schmitz dancing on a stage at the Cheetah Lounge, located at 5627 - 24th Avenue in said city; that during said dance, said police officer observed the defendant remove from her body all of her clothing; that said police officer further observed the defendant dancing completely nude and doing various suggestive squats and bends and exposing her vaginal area to the audience and that she then squatted near the front of the stage in front of a male patron and grabbed him by the head and made a motion as if to pull his face into her vagina; that said defendant then got up and laid a rug upon the floor of the stage and laid down on the rug on her back with her head away from the audience, and spread her legs into a wide open position and took a large plume and ran it up her leg beginning at the toes and stopping at her vaginal area where

she made a dusting and patting motion with the plume and then repeated the stroking of the leg and patting of the vaginal area several times; that said defendant then got up and placed the plume between her legs and while holding it with one hand in front of her body and one hand behind her body, she ran said plume forward and backward on her vaginal area and then proceeded to the front of the stage and rubbed the plume under the nose of a male customer; said conduct by the defendant being contrary to Section 944.21 (1) (d), Wis. Stats.; and prays that said defendant be dealt with according to law, and that the basis for the complainant's charge of such offense is that affiant is a City of Kenosha Police Officer and has knowledge of the above alleged facts by reason of being an eyewitness thereto.

/s/ William P. Schmitz
Complainant

Subscribed and sworn to before me on
March 8, 1972.

/s/ William U. Zievers
Court Commissioner

Approved for filing */s/ Burton A. Scott*
District Attorney

I find that probable cause (exists) (does not exist) that the crime was committed by the defendant and order that he be (held to answer thereto) (released forthwith).

Dated March 8, 1972

/s/ William U. Zievers
Court Commissioner

STATE OF WISCONSIN,
COUNTY COURT (II) COURT,
KENOSHA COUNTY

STATE OF WISCONSIN,
Plaintiff, CRIMINAL COMPLAINT

vs.

MARTIN DE FOOR
5629 - 24th Avenue
Kenosha, Wisconsin,
Address

File No. *9798*

Defendant.

Anthony Marabelli, being first duly sworn, on oath says that on October 27, 1971, at the City of Kenosha, in said County, the defendant did: intentionally and feloniously produce a lewd, obscene, and indecent performance; in that at approximately 9:35 P.M. on said date the said defendant was the agent and operator of a Class "B" licensed tavern located at 5627 - 24th Avenue in said city; that said defendant did knowingly suffer and permit one Brenda F. Filippi to dance as a go-go dancer on the stage of said lounge; that during the course of said dance, the said Brenda Filippi did publicly and indecently expose a sex organ, to wit, the region of her external vaginal orifice; that she did remove all the clothing from her body and did further remove pubic hairs from her vaginal area and pass them to patrons of said tavern; that she did, during said dance and while naked, dance in a manner fashioned after sexual intercourse, all of said acts being done with the knowledge, sufferance, approval, and ratification of said defendant; said conduct by the defendant being contrary to Section 944.21 (1) (d), Wis. Stats., and prays that said defendant be dealt with according to law; and that the basis for the

complainant's charge of such offense is: that complainant is a City of Kenosha Police Officer and has knowledge of the above alleged facts from reading the report of City of Kenosha Police Officer Cyril Ellison, eyewitness, in which report the above alleged facts are set forth, and by reason of being an eyewitness thereto, and from reading the records of the City Clerk of Kenosha which state that said defendant was the agent for said Cheetah Lounge; that complaint believes said Cyril Ellison to be reliable because he is an eyewitness to the facts above alleged.

/s/ Anthony Marabelli
Complainant

Subscribed and sworn to before me
on December 14, 1971

/s/ Bruce E. Schroeder
Asst. District Attorney

Approved for filing */s/ Bruce E. Schroeder*
Asst. District Attorney

I find that probable cause (exists) (does not exist) that the crime was committed by the defendant and order that he be (held to answer thereto) (released forthwith).

Dated December 14, 1971

/s/ Earl D. Morton
Judge

CERTIFICATE OF SERVICE

I, the undersigned, a member of the Bar of this Court, do hereby certify that on February 26, 1973, I duly mailed three copies of the Appendix to each of the attorneys for the appellees, addressed as follows:

Mr. Jay Schwartz
704 Park Avenue
Racine, Wisconsin 53403

Mr. Victor C. Cairo
704 Park Avenue
Racine, Wisconsin 53403

LE ROY L. DALTON
Assistant Attorney General
of Wisconsin

Attorney for Appellants

Supreme Court of the United States

No. 72-658

City of Kenosha, Wisconsin, et al.,

Appellants,

v.

Peter G. Bruno, et al.

APPEAL FROM the United States District Court for the Eastern District of Wisconsin.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

January 8, 1973